

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,)
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA,)
Plaintiff,)
vs.) 4:05-CV-00329-TCK-SAJ
TYSON FOODS, INC., et al,)
Defendants.)

THE VIDEOTAPED 30(b)(6)
DEPOSITION OF BENNY McCLURE, produced as a
witness on behalf of the Plaintiff in the above
styled and numbered cause, taken on the 15th day of
August, 2007, in the City of Fayetteville, County of
Washington, State of Arkansas, before me, Lisa A.
Steinmeyer, a Certified Shorthand Reporter, duly
certified under and by virtue of the laws of the
State of Oklahoma.

Exhibit 27

TULSA FREELANCE REPORTERS
918-587-2878

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1 into that contract with George's.

2 Q That's the grower's choice whether they even
3 want to enter into a contract; correct?

4 A That's correct.

5 Q But the actual terms of that contract, the 01:33PM
6 conditions under which they will perform, the grower
7 does not negotiate those terms with George's; is
8 that correct?

9 MR. GRAVES: Object to the form.

10 A That is correct. 01:33PM

11 Q Is it correct then that George's supplies and
12 delivers the birds to its growers at no cost?

13 A That is correct.

14 Q And George's owns the birds or retains title
15 to the birds throughout their life? 01:33PM

16 A That is correct.

17 Q Does George's own any of the dead birds in any
18 situation with its growers?

19 MR. GRAVES: Object to the form of the
20 question. 01:34PM

21 A As part of the contract, the grower takes the
22 responsibility for disposing of those dead according
23 to all local, state and federal rules and
24 regulations.

25 Q All right. So their job is just to get rid of 01:34PM

1 them, bury them, dispose them, incinerate, however
2 is required by law?

3 MR. GRAVES: Object to the form.

4 A To dispose of them as is required by law, yes.

5 Q Does George's pick up any dead birds for any 01:34PM
6 reason?

7 A Once we start to catch birds on a farm, for
8 example, a broiler farm, if we're going out to bring
9 those birds into the plant, once we actually start
10 the process of catching those birds, if any of the 01:34PM
11 birds die during that catching process, then we take
12 those birds in.

13 Q All right. Is George's the one that sets the
14 schedule for placement of the birds?

15 A We set the schedule while working with the 01:35PM
16 growers' needs and wishes. If a grower wants to
17 take a vacation and he lets us know ahead of time,
18 we'll to the best of our ability provide him enough
19 out time to work in his vacation between flocks or
20 if he needs to do repairs to his buildings or 01:35PM
21 whatever he needs, we try to accommodate those
22 requests.

23 Q The schedule for picking up the birds is
24 determined by George's?

25 A Yes. 01:35PM

1 Q The actual birds that are delivered, they are
2 not chosen by the grower but picked by George's for
3 delivery?

4 A That is correct. However, on our delivery,
5 when we put the delivery schedules together, we have 01:36PM
6 programs in place to rotate chicks out of pullet
7 flocks, to rotate any byproducts that we may source.
8 We keep track of what chicks that a grower has
9 received for the last year and we make certain that
10 he doesn't get more than his share of pullet chicks 01:36PM
11 or outside purchased chicks, that those get rotated
12 around so he doesn't get stuck in a rut where he
13 gets them all the time.

14 Q So there are times where George's will
15 actually buy chicks from another supplier, provide 01:36PM
16 them to the grower -- to George's growers for
17 grow-out?

18 A There have been times when that has happened,
19 yes.

20 Q All right. Is that more the exception than 01:37PM
21 the rule?

22 MR. GRAVES: Object to the form.

23 A Yes, that is more the exception than the rule.

24 Q Does George's supply and deliver all the feed
25 to each of its grow-out farms? 01:37PM

1 A Yes, it does.

2 Q Does it supply all the medications required
3 for the birds at the grow-out farms?

4 A If any is required, we would supply it.

5 Q Does George's supply all the vaccinations that 01:37PM
6 are required for the birds at the grow-out farm?

7 A Yes, we do.

8 Q And does George's supply all the veterinary
9 services for its birds?

10 A Yes. 01:37PM

11 Q George's in fact -- it also supplies what I
12 refer to as a service tech or a field
13 representative, field man. What term do you use at
14 George's?

15 A Serviceman is fine. 01:37PM

16 Q Serviceman, and does George's supply a
17 serviceman for use -- let me back up. First off,
18 the serviceman is an employee of George's; correct?

19 A Correct.

20 Q His duties or tasks are generally to go in and 01:38PM
21 check on the various grow-out farms on a fairly
22 regular basis?

23 MR. GRAVES: Object to the form.

24 A Generally, yes.

25 Q And the cost of that is borne by George's, is 01:38PM

1 that correct, for the use of the service tech?

2 A That is correct.

3 Q Is it part of the responsibility of the

4 service tech to supervise and advise on the care and

5 feeding and management of the flock?

01:38PM

6 MR. GRAVES: Object to the form of the
7 question.

8 A That is correct.

9 Q Does this service tech provide periodic

10 inspection of the farm and the birds?

01:38PM

11 MR. GRAVES: Object to the form of the
12 question.

13 A He does periodically visit the farm and
14 inspect the birds.

15 Q Generally how often does that occur?

01:39PM

16 A On an average that would occur once a week.

17 Q Is part of the duties of the service tech to
18 check on the temperature control in the barns? Let
19 me rephrase that. Does he check on the temperature
20 while he's there at the barns?

01:39PM

21 A Yes.

22 Q And does he check on the controls for the
23 temperature while he's inspecting the barns?

24 A Yes.

25 Q Does he inspect the ventilation controls?

01:39PM

1 A I want to be careful here that I don't start
2 agreeing with things when I'm not really certain
3 what you're asking. From a -- does he inspect the
4 ventilation controls? He will inspect the
5 condition, the growing conditions inside the house.

01:40PM

6 He will go in the house and he will say the
7 temperature is appropriate to produce this age of
8 bird; the air quality is good; the humidity is not
9 too high; the ammonia is not too high. That's what
10 his inspection is geared towards. Will he go and
11 physically inspect all the different pieces of
12 equipment in that house that help provide that
13 environment, no.

01:40PM

14 Q That wasn't my question either, but let me ask
15 you this then: Ventilation is important with regard
16 to raising the birds, is it not?

01:40PM

17 A Yes, it is.

18 Q And many or most of the barns have some type
19 of mechanism that controls how that ventilation is
20 managed?

01:40PM

21 MR. GRAVES: Object to the form.

22 A Some type. The types can be greatly varied
23 but some type.

24 Q If the inspector determines while he's at the
25 barn that the ventilation isn't as it should be,

01:41PM

1 will he adjust those controls to provide more or
2 less ventilation as he deems necessary?

3 A He will not unless -- if the producer is
4 there, if the contract grower is there and he asks
5 the serviceman for some assistance in learning how
6 to better operate this equipment or how to provide a
7 better environment, then the serviceman may get
8 hands-on with him teaching him how to do it. If
9 that grower is not there, then the serviceman won't

01:41PM

10 touch it unless he feels like that it's so far out
11 that the health and welfare of the birds are in
12 jeopardy.

01:41PM

13 Q Okay, but in that situation, he would
14 certainly leave a written report advising him of his
15 inspection and findings and make suggestions for
16 changes that he thinks should happen?

01:41PM

17 MR. GRAVES: Object to the form.

18 A He will leave a written report on every visit,
19 whether things are as they should be or not. In the
20 event that there was something that was so far out
21 of line that the welfare of the bird was in
22 jeopardy, as soon as he got that corrected, he would
23 make every effort to locate that grower and make
24 that grower aware of what the condition was and what
25 he did to correct it.

01:42PM

01:42PM

1 Q Does a service tech check on the water supply
2 to the birds when he inspects?

3 A He will check and make sure that there is
4 water to the birds and that the watering systems
5 themselves are working properly.

01:42PM

6 Q And that would include perhaps even the height
7 of the nipples that service the birds for accessing
8 water?

9 A He will make note as to whether or not the
10 height of the waterers are appropriate or not.

01:43PM

11 Q In addition to checking on water, would he
12 check on the feed delivery systems for the birds
13 when he makes his inspection?

14 A Through the course of the visit, he will make
15 note of the feeders.

01:43PM

16 Q What kind of things does he look for when he
17 does that?

18 A First off are the feeders operating; is it the
19 appropriate feed depth in the pan; is the feeder --
20 does it have a hole in the tube that it's leaking
21 feed out on the floor somewhere; is the feeder
22 height set properly for that age bird?

01:43PM

23 Q It's not uncommon to have unused feed in the
24 bedding material and manure when it's removed from
25 the house?

01:43PM

1 A Correct.

2 Q Is there -- what's the outer range that
3 logistically George's would like to see that mileage
4 be? Did I say that right? Let me say it this way:
5 How far -- how many miles out does George's prefer
6 the farm to be from their mill or feed production
7 area?

02:45PM

8 A That preference has changed over the years as
9 the cost of transportation has went up. That number
10 would currently be 30 miles, but we have a lot of
11 farms in production that are over 30 miles from the
12 mill and we will continue to do business with those
13 folks, but we wouldn't add a new farm today; we
14 wouldn't contract with a new grower today that was
15 over 30 miles from the mill.

02:46PM

02:46PM

16 Q Okay. I'm going to hand you what's been
17 marked as Exhibit 39 and ask you to familiarize
18 yourself with that and we'll ask you some questions.

19 MR. GARREN: For the Record there are a
20 couple of miscellaneous sheets in here that marked
21 attorney eyes only. I'm not sure why they are. But
22 you might look at those, Counsel, and see if there's
23 a reason to continue to have that designation.

02:47PM

24 Q Do you know what this is?

25 A It's a liquid manure permit application.

02:48PM